

Message Text

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AMEMBASSY TRIPOLI

AMEMBASSY TUNIS

USMISSION USUN

C O N F I D E N T I A L RABAT 3461

LIMDIS

E.O. 11652: GDS

TAGS: PFOR PBOR MO SS SP

SUBJ: MOROCCAN-ALGERIAN AGREEMENT ON SPANISH SAHARA

REF: MADRID 4926

1. RABAT 3447 CONVEYED INFORMATION ON ABOVE SUBJECT OBTAINED FROM FONMIN SEC GENERAL ABDELHAKIM AL IRAQUI, HIGHEST GOM OFFICIAL AVAILABLE IN RABAT AT THIS TIME SINCE KING AND ENTIRE PALACE ENTOURAGE STILL AT MARRAKECH. AFTER REFLECTING ON INADEQUACY OF THIS INFORMATION FOR PURPOSES DESCRIBED REFTEL, I TELEPHONED MARRAKECH AND SPOKE TO DIRECTOR ROYAL CABINET AHMED BENSOUDA. I EXPLAINED TO BENSOUDA THAT I DETECTED CERTAIN DISCREPANCIES BETWEEN REPORTS WE WERE GETTING FROM THE HAGUE REGARDING ALGERIAN ICJ PRESENTATION AND TENOR OF EARLIER GOM-GOA COMMUNIQUE. I INDICATED IT WOULD BE VERY USEFUL IF I COULD REPORT MOST AUTHORITATIVE CURRENT GOM VIEW REGARDING

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NATURE AND EXTENT OF ANY ALGERIAN COMMITMENT TO MOROCCO ON

SAHARA. BENSOUDA IMMEDIATELY GRASPED MY POINT AND RESPONDED AS FOLLOWS:

A. JOINT ALGERIAN-MOROCCAN COMMUNIQUE FIRMLY ESTABLISHED PRINCIPLE OF ALGERIAN NON-INTERVENTION IN SAHARA AS WELL AS REGISTERING ENTHUSIASM OF ALGERIA TOWARD MOROCCO-MAURITANIAN ACCORD. BENSOUDA REPEATED TO ME THE THREE POINTS BOUTEFLIKA MADE TO KING WHICH KING HAD CONVEYED TO DEPSECDEF CLEMENTS JULY 11 (PARA 4 RABAT 3412). BENSOUDA SAID HE WAS THERE AT TIME AND HIMSELF HEARD BOUTEFLIKA MAKING THESE PONTS.

B. BENSOUDA SAID HE HAD JUST BEEN ON PHONE WITH BOUTEFLIKA. LATTER TOLD BENSOUDA THAT ALGERIA COULD NOT CHANGE ITS POSTURE ON SAHARA OVERNIGHT, BUT INTENDED TO TURN ITS POLICY AROUND IN STAGES. GOA PRESENTATION IN ICJ SHOULD BE SEEN IN THIS LIGHT. THERE WOULD BE OTHER OPPORTUNITIES FOR GOA TO TAKE PUBLIC POSITIONS, E.G., IN UN AND IN ISLAMIC CONFERENCE, AND BENSOUDA ADDED "YOU WILL SEE HOW QUIET THEY WILL BE."

C. BENSOUDA SAID KING NOT DISSATISFIED WITH WHAT ALGERIANS HAVE SAID SO FAR IN VIEW FOREGOING. HE SAID KING EXPECTED CONTINUING EVOLUTION AND, AT END OF ROAD, KING FORESAW MOROCCAN RATIFICATION OF BORDER AGREEMENT WITH ALGERIA.

D. BENSOUDA SAID SPANIARDS AMONG OTHERS SHOULD BE GUIDED BY CLEAR WORDS IN COMMUNIQUE DEFINING ALGERIAN COMMITMENT. WHEN I ASKED WHAT ELSE GOM HAD TO GO ON IN THIS REGARD, BENSOUDA SPOKE OF A "PROCES VERBALE," PRESUMABLY A WRITTEN DOCUMENT RECORDING MOROCCAN-ALGERIAN UNDERSTANDING, BUT DID NOT ELABORATE FURTHER.

2. COMMENT: THIS IS BY FAR THE MOST EXPLICIT STATEMENT I HAVE YET HEARD THAT DEAL EXISTS INVOLVING ULTIMATE MOROCCAN RATIFICATION OF BORDER AGREEMENT WITH ALGERIA. STEP-BY-STEP PROCESS BENSOUDA INDICATES ALGERIANS INTEND TO FOLLOW PROVIDES WHAT APPEARS TO ME TO BE PLAUSIBLE EXPLANATION OF APPARENT DISCREPANCIES BETWEEN ALGERIA'S CURRENT PERFORMANCE AT THE HAGUE AND ITS RECENT JOINT COMMUNIQUE WITH GOM.

3. FYI. AS A FORMER PROFESSOR OF INTERNATIONAL LAW, I DO NOT CONFIDENTIAL

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READ PORTIONS AVAILABLE HERE OF ALGERIAN ARGUMENT AT ICJ TO BE SUCH CLEAR STATEMENT OF ALGERIA'S SUPPORT FOR SELF-DETERMINATION. INSTEAD I READ IT AS A MOST INTRIGUING AND SOMEWHAT NOVEL ARGUMENT SUMMARIZED BRIEFLY AS FOLLOWS: TRADITIONAL INTERNATIONAL LAW KNOWS ONLY TWO CATEGORIES OF TERRITORIAL ACQUISITION: "ORIGINAL" (RES NULLIUS) OR "DERIVATIVE" (WHERE PREVIOUS SOVEREIGNTY EXISTED). ALGERIAN REP NOW CLAIMS THAT THIS CONCEPT DERIVED FROM WESTERN CIRCUMSTANCES AND NOT FULLY APPLICABLE TO CONDITIONS IN

THIRD WORLD, NOTABLY NORTH AFRICA. HE CONSTRUCTS A THIRD TYPE OF ASSOCIATION WHICH, IF I FOLLOW HIS REASONING, IS LESS THAN SOVEREIGNTY BUT MORE THAN RES NULLIUS. THEREFORE, BEARING IN MIND THE TWO QUESTIONS ON WHICH UN ASKED ADVISORY OPINION TO ICJ (USUN 5841), HE ANSWERS FIRST QUESTION, NAMELY, "WAS WESTERN SAHARA RES NULLIUS AT THE TIME OF COLONIZATION BY SPAIN" IN THE NEGATIVE, THUS REJECTING WHAT I UNDERSTAND TO BE SPANISH THESIS. FROM WHAT WE HAVE HERE SO FAR, WE CANNOT YET DETERMINE HOW HE WILL ANSWER SECOND QUESTION, NAMELY, "WHAT LEGAL TIES EXISTED BETWEEN THIS TERRITORY AND MOROCCO AND MAURITANIA?" ADMITTEDLY, AGAIN FROM FRAGMENTS KNOWN HERE, HE COULD CONTINUE THIS LINE OF ARGUMENT TOWARDS SELF-DETERMINATION. OR HE MIGHT USE THE ABOVE MENTIONED THIRD CATEGORY IN A DIFFERENT PERHAPS EVEN FUZZY MANNER TO ARGUE TOWARD A LESS CLEAR-CUT CONSLUSION. IF THIS IS IN FACT THE OUTCOME, IT WILL TEND TO LEND CREDENCE TO BENSOUDA'S ASSERTION THAT ALGERIANS ARE CHANGING THEIR POSITION, BUT GRADUALLY.

4. WE SHALL BE IN A BETTER POSITION TO EVALUATE ARGUMENT OF ALGERIAN DELEGATION ONLY AT THE END BECAUSE FOLLOWING FRENCH LEGAL METHOD, PORTIONS KNOWN HERE STILL DEVELOPING THEORETICAL FRAMEWORK AND HAD NOT YET REACHED CONCLUSIONS TO BE DERIVED THEREFROM. AGAIN, FOLLOWING FRENCH LEGAL TRAINING THEY SHOULD COME AT THE VERY END. END FYI.
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